

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOILERMAKERS NATIONAL ANNUITY)	
TRUST FUND, on behalf of itself and all)	NO. 2:09-CV-00037-MJP
others similarly situated,)	
	FEDERAL DEPOSIT INSURANCE
Plaintiff,)	CORPORATION'S REPLY BRIEF IN
	SUPPORT OF MOTION TO
v.)	DISMISS FOR LACK OF SUBJECT
	MATTER JURISDICTION
WAMU MORTGAGE PASS THROUGH)	
CERTIFICATES, SERIES 2006-AR1, <i>et al.</i> ,)	Noted on Motion Calendar:
	March 6, 2009
Defendants.)	

The Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, a depository institution ("FDIC as Receiver"), through undersigned counsel, hereby files this reply brief in support of its motion to dismiss for lack of subject matter jurisdiction the claims of plaintiff Boilermakers National Annuity Trust Fund ("Boilermakers") against the FDIC as Receiver. Boilermakers' opposition to the FDIC as Receiver's motion to dismiss misapprehends the two fundamental points requiring dismissal.

1 A. Boilermakers Has Just Commenced the Administrative Process, Not Exhausted It.

2 Boilermakers' opposition to the motion to dismiss announces that it has recently filed a
3 proof of claim form and thereby "commenced the administrative claim review process with the
4 Receiver, defendant FDIC." *See* Boilermakers Opposition to Motion to Dismiss at 1 &
5 Declaration of Daniel Rohn at ¶ 2 & ex. A. Commencing the administrative claim review
6 process is not the same as completing it, however. Boilermakers has not exhausted its
7 administrative remedies, but merely started the process. The administrative review process is
8 not complete until the FDIC has made a determination on the claim pursuant to 12 U.S.C.
9 § 1821(d)(5).

10 B. This Court Does Not Have Subject Matter Jurisdiction over Boilermakers' Claims
11 Against the FDIC

12 Boilermakers filed its lawsuit on or about January 12, 2009, well after the FDIC was
13 appointed receiver for Washington Mutual Bank on September 25, 2008, and well before
14 Boilermakers had even filed a claim in the FDIC receivership. As noted above, Boilermakers
15 has not exhausted its administrative remedies. Accordingly, pursuant to the plain language of
16 12 U.S.C. § 1821(d)(13)(D), this Court lacks subject matter jurisdiction over Boilermakers'
17 claims against the FDIC as Receiver of Washington Mutual Bank. As the Ninth Circuit Court
18 of Appeals has explicitly and dispositively held: "Section 1821(d)(13)(D) strips all courts of
19 jurisdiction over claims made outside the administrative procedures of section 1821."
20 *Henderson v. Bank of New England*, 986 F.2d 319, 320 (9th Cir.), *cert. denied*, 510 U.S. 995
21 (1993).

22 Whether or not this action is consolidated with *New Orleans Employees' Retirement*
23 *System and MARTA/ATU Local 732 Employees Retirement Plan v. Washington Mutual Bank,*
24 *et al.*, No. C09-0134-RSM (the "New Orleans Action"), and regardless of whether this action
25 or the New Orleans Action is stayed, Boilermakers' claims against the FDIC as Receiver are
26 subject to mandatory administrative remedies and must be dismissed because the Court does
27 not have subject matter jurisdiction over those claims.
28

Prayer for Relief

WHEREFORE, on the basis of the foregoing and all the reasons set forth in its motion and the exhibits thereto, the FDIC as Receiver for Washington Mutual Bank respectfully requests that the Court dismiss Boilermakers' claims against the FDIC for lack of subject matter jurisdiction, together with such other and further relief deemed just and proper under these circumstances.

DATED this 5th day of March, 2009.

Respectfully submitted,

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DECLARATION OF SERVICE

I hereby certify that on March 5, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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FDIC REPLY ON

MOTION TO DISMISS - 5

Cause No.: 2:09-CV-00037-MJP

#701688 v1 / 30490-002

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FDIC REPLY ON

MOTION TO DISMISS - 6

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